

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Harvest Medical Clinic, Inc.,

Defendant.

CIV 04-1821 PHX JAT

AMENDED CONSENT DECREE

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against Harvest Medical Clinic, Inc. to enforce Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991. In the Complaint, the Commission alleged that Defendant discriminated against Lupita Carrasco, Jose Avalos, Carmen Marquez, Daniela Sanchez, Susan Villanueva, Connie Moraga, Arlene Hernandez, Sonia Patch and Rene Castell (collectively "Charging Parties" or the "Class Members") by discharging them on the basis of their national origin, Hispanic.

In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of this Decree without Harvest Medical admitting any violation of the law. The Parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

1 It is hereby **ORDERED, ADJUDGED AND DECREED:**

2 1. This Decree resolves all claims of the Commission against
3 Defendant, including back pay, compensatory and punitive damages, interest,
4 injunctive relief, attorney's fees, and costs arising out of the issues in this lawsuit.

5 **INJUNCTION**

6 2. Defendant and its officers, agents, employees, successors, assigns,
7 and all persons in active concert or participation with it, both at the time that this
8 Decree becomes effective and for the duration of this Decree, are permanently
9 enjoined from: (a) unlawfully discriminating against any employee due to his or
10 her national origin; (b) terminating any employee due to his or her national origin;
11 and (c) retaliating against any employee because he or she: (i) opposes or
12 opposed discriminatory practices made unlawful by Title VII; (ii) files or filed a
13 charge of discrimination or assists, assisted, participates, or participated in the
14 filing of a charge of discrimination; or (iii) assists, assisted, participates or
15 participated in an investigation or proceeding brought under the Federal or State
16 laws prohibiting discrimination or retaliation.

17 3. Defendant shall not condition the receipt of the individual relief
18 specified in this Decree on the Class Members' agreement to: (a) maintain as
19 confidential the terms of this Decree; or (b) waive the statutory right to file a
20 charge with any federal or state anti-discrimination agency. Defendant will not
21 require as a condition of settlement the execution of any document which
22 conflicts in terms or principle with the directives of this Decree.

23 **MONETARY RELIEF**

24 4. Defendant agrees to resolve this matter with the Commission for
25 payment of a total of \$190,000.00, to Lupita Carrasco, Jose Avalos, Carmen
26 Marquez, Daniela Sanchez, Susan Villanueva, Connie Moraga, Arlene
27 Hernandez, Sonia Patch and Rene Castell, to be distributed in installments over a
28 24-month period beginning twenty business days from the Court's entry of the

1 Consent Decree at the addresses provided by the Commission. Within three
2 business days of the issuance of each payment, Defendants shall submit a copy
3 of the checks or money orders and all related correspondence to Mary Jo O'Neill,
4 Regional Attorney, Equal Employment Opportunity Commission, 3300 North
5 Central Avenue, Suite 690, Phoenix, Arizona 85012. Subsequent installments
6 shall be paid on or before the tenth day of each month for twenty four months
7 until the settlement amount is paid in full.

8 5. As set forth in Attachment A, these payments represent settlement of
9 compensatory damages in the amount of \$72,589.00. These payments also
10 represent settlement of backpay damages in the amount of \$117,411.00.
11 Defendant will issue United States Internal Revenue Service Form 1099 to Lupita
12 Carrasco, Jose Avalos, Carmen Marquez, Daniela Sanchez, Susan Villanueva,
13 Connie Moraga, Arlene Hernandez, Sonia Patch and Rene Castell for the
14 compensatory damages for the tax year during which the payments are made.
15 Defendant will issue W-2 Wage Statements for the backpay damages for the tax
16 year during with the payments are made for all class members except Rene
17 Castell. Defendant will issue a Form 1099 to Rene Castell for all compensatory
18 damages and backpay damages for the tax year during which the payments are
19 made.

20 **OTHER RELIEF**

21 6. Defendant shall expunge from the personnel files of Lupita Carrasco,
22 Jose Avalos, Carmen Marquez, Daniela Sanchez, Susan Villanueva, Connie
23 Moraga, Arlene Hernandez, Sonia Patch and Rene Castell: (a) all references to
24 the charges of discrimination filed against Defendant that formed the basis of this
25 action; (b) all references to the Class Members' participation in this action; (c) any
26 derogatory document which relates to complaints or investigation of complaints of
27 unlawful harassment and/or unlawful termination based on national origin and/or
28 race and (d) any other documents relating to the termination of the Class

1 Members.

2 7. Defendant shall institute and carry out policies and practices that
3 help assure a work environment free from unlawful national origin discrimination
4 and unlawful termination based on national origin. To assist Defendant in its
5 efforts to assure such a work environment, Defendant shall take the actions
6 provided in paragraphs Eight (8) through Thirteen (13) of this Decree.

7 **NOTICE**

8 8. Defendant shall post for the duration of this decree, in a prominent place
9 frequented by its employees at its facilities, the Notice attached as Attachment B.
10 The Notice shall be the same type, style and size as set forth in Attachment B.

11 **TRAINING**

12 9. Within 6 months of the entry of this Decree, Defendant shall retain
13 and pay a consultant/lecturer, acceptable to the EEOC, who shall provide annual
14 training of at least two hour duration to all of its employees, including doctors and
15 staff, for a period of two years from the date of this Decree, regarding unlawful
16 discrimination under Title VII.

17 **POLICIES/PROCEDURES**

18 10. Defendant will develop an Employee Handbook within sixty (60) days
19 of the entry of this Decree, which shall include written EEO policies and
20 procedures.

21 11. Defendant agrees to address all workforce conflict issues (including
22 rudeness, sexual harassment, and inappropriate joking) through individual
23 supervision, counseling, and discipline.

24 12. Defendants do not have an English-only policy. The memorandum
25 issued on May 13, 2003 addressing workplace communication has been
26 rescinded and will not be reinstated.

27 **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

28 13. Defendant will report in writing and in affidavit form to the Regional

1 Attorney of the Commission's Phoenix District Office, at the address provided in
2 paragraph Four (4) above, beginning six months from the date of the entry of this
3 Decree, and thereafter every year for the duration of the Decree, the following
4 information:

5 A. A copy of the revised policies required in paragraphs ten (10) and
6 eleven (11) of this Decree.

7 B. Any changes, modifications, revocations, or revisions to its policies
8 and procedures referenced in paragraphs ten (10) and eleven (11), above.

9 C. Confirmation that (1) the Notice required in paragraph eight (8) of
10 this Decree was posted, and the locations where it was posted; (2) the policies
11 required in paragraph ten (10) were distributed to each current and new
12 employee of Defendant, and posted; (3) the expungement from the Class
13 Members' personnel files required in paragraph Six (6) of this Decree took place,
14 the date of the expungement, and the specific documents expunged.

15 D. A copy of the notice required in paragraph eight (8) of this Decree.

16 **COSTS AND DURATION**

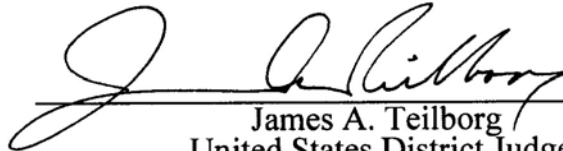
17 14. Each Party shall bear its own costs and attorneys' fees incurred as a
18 result of this action through the filing of this Decree.

19 15. The duration of this Decree shall be twenty-four (24) months from its
20 entry. This Court shall retain jurisdiction over this action for the duration of the
21 Decree, during which the Commission may petition this Court for compliance with
22 this Decree. Should the Court determine, after notice and an opportunity for the
23 Defendant to be heard, that Defendant has not complied with this Decree, the
24 Court may order appropriate relief, including extension of this Decree for such
25 period as may be necessary to remedy its non-compliance, an award of
26 attorneys' fees and costs, and fines for contempt of court.

27 16. Absent extension, this Decree shall expire by its own terms at the
28 end of twenty-four (24) from the date of entry without further action by the Parties.

1 17. The Parties agree to entry of this Decree and judgment subject to
2 final approval by the Court.

3
4 DATED this 4th day of October, 2005.

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7
8 
9 James A. Teilborg
 United States District Judge

1 APPROVED AND CONSENTED TO:

2
3 GWENDOLYN YOUNG REAMS
4 Associate General Counsel
Litigation Management Services

5 s/ Laura A. Smith
Jay A. Zweig, Esq.
6 Laura A. Smith, Esq.
7 EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

8 GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, AZ 85016-9225

9 Attorneys for Defendant

s/ Mary Jo O'Neill
MARY JO O'NEILL
Regional Attorney

10 s/ C. Emanuel Smith
C. EMANUEL SMITH
11 Supervisory Trial Attorney
12

13 s/ Michelle Marshall
14 MICHELLE G. MARSHALL
Trial Attorney

15 EQUAL EMPLOYMENT
16 OPPORTUNITY COMMISSION
3300 North Central Ave., Suite 690
17 Phoenix, Arizona 85012
602-640-5020

18 Attorneys for Plaintiff
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22
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ATTACHMENT A

Monthly Backpay Damages Payments

Due Date	L. Carrasco	Jose Avalos	C. Marquez	D. Sanchez	S. Villanueva	C. Moraga	A. Hernandez	Sonia Patch	Rene Castell
Nov. 10, 2005	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Dec. 10, 2005	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Jan. 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Feb. 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Mar. 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
April 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
May 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
June 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
July 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Aug. 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Sept. 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Oct. 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Nov. 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Dec. 10, 2006	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Jan. 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Feb. 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Mar. 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
April 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
May 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
June 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
July 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Aug. 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
Sept. 10, 2007	\$ 724.91	\$ 599.33	\$ 754.99	\$ 393.50	\$ 410.40	\$ 360.00	\$ 535.41	\$ 1114.16	--
Oct. 10, 2007	\$ 724.83	\$ 599.29	\$ 754.87	\$ 393.50	\$ 410.20	\$ 360.00	\$ 535.33	\$ 1114.08	--
TOTALS	17396	14383	18117	9444	9845	8640	12848	26738	--

Monthly Compensatory Damages Payments

Due Date	L. Carrasco	Jose Avalos	C. Marquez	D. Sanchez	S. Villanueva	C. Moraga	A. Hernandez	Sonia Patch	Rene Castell
Nov. 10, 2005	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Dec. 10, 2005	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Jan. 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Feb. 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Mar. 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
April 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
May 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
June 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
July 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Aug. 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Sept. 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Oct. 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Nov. 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Dec. 10, 2006	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Jan. 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Feb. 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Mar. 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
April 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
May 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
June 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
July 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Aug. 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
Sept. 10, 2007	\$ 312.96	\$ 312.96	\$ 312.96	\$ 312.96	\$ 312.96	\$ 312.96	\$ 312.96	\$ 312.96	\$ 521.37
Oct. 10, 2007	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 312.91	\$ 521.24
TOTALS	7509.89	7509.89	7509.89	7509.89	7509.89	7509.89	7509.89	7509.89	12509.89

ATTACHMENT B

NOTICE TO ALL EMPLOYEES OF HARVEST MEDICAL CLINIC, INC.

It is unlawful under federal law, Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of national origin in the recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC or the Arizona Civil Rights Division (ACRD).

An employer shall not discriminate against any employee on the basis of national origin, and shall not retaliate against any employee for complaining about discrimination.

If you believe you have been discriminated against or retaliated against, you have the right to seek assistance from:

- (1) EEOC
3300 North Central Ave., Suite 690
Phoenix, Arizona 85012
Telephone: (602) 640-5000
TTY: (602) 640-5072
Website (national): www.eeoc.gov; or

- (2) Arizona Civil Rights Division (ACRD)
Attorney General's Office
1275 W. Washington
Phoenix, Arizona 85007
(602) 255-5263

You have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against or retaliated against.

No Retaliation Clause. It is against the law for any action to be taken against you by any supervisory or management official for: (1) opposing discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions to be taken against you, you should immediately contact the EEOC or the ACRD at the addresses or telephone numbers listed above.